



U.S. Department of Justice

Michael J. Sullivan
United States Attorney
District of Massachusetts

Main Reception: (617) 748-3100

John Joseph Moakley United States Courthouse
Suite 9200
1 Courthouse Way
Boston, Massachusetts 02210

September 13, 2005

Paul V. Kelly, Esq.
Kelly, Libby & Hoopes
175 Federal Street
Boston, MA 02110

Re: Joseph DiFlumera
Criminal No. 04-40002

Dear Mr. Kelly:

This letter sets forth the Agreement between the United States Attorney for the District of Massachusetts ("the U.S. Attorney") and your client, Joseph DiFlumera ("Defendant"), in the above captioned case. The Agreement is as follows:

1. Change of Plea

At the earliest practicable date, Defendant shall plead guilty to Counts 2 through 7 of the above-captioned Indictment: Crim. N 04-40002. Defendant expressly and unequivocally admits that he fact knowingly committed the crimes charged in Counts 2 through of the Indictment, and is in fact guilty of those offenses.

The government also agrees to dismiss counts 1 and 8 through 11 of the Indictment at the time of sentence.

2. Penalties

Defendant faces the following maximum penalties on each count:

- a. 20 years' incarceration in the custody of the Attorney General;
- b. a fine of \$250,000;

→ second superseding
JPK.

- c. five years' supervised release; and
- d. a special assessment of \$100,00.

3. Sentencing Guidelines

The parties agree to jointly take the following positions sentencing:

- (a) The base offense level is 6 pursuant to U.S.S.G. §2B1.
- (b) The specific offense characteristic §2B1.1(b)(1) applies and results in an increase of 16 levels.
- (c) The specific offense characteristic §3B1.3 applies a results in an increase of 2 levels.

The U.S. Attorney's agreement that the disposition set for below is appropriate in this case is based, in part, on Defendant prompt acceptance of personal responsibility for the offense(s) conviction in this case.

The U.S. Attorney specifically may, at his sole option, released from his commitments under this Agreement, including, but not limited to, his agreement that paragraph 4 constitutes the appropriate disposition of this case, if at any time between the execution of this Agreement and sentencing, Defendant:

- (a) Fails to admit a complete factual basis for the plea;
- (b) Fails to truthfully admit his conduct in the offenses of conviction;
- (c) Falsely denies, or frivolously contests, relevant conduct for which Defendant is accountable under U.S.S.G. § 1B1.3;
- (d) Fails to provide truthful information about his financial status;
- (e) Gives false or misleading testimony in any proceeding relating to the criminal conduct charged in this case and any relevant conduct for which Defendant is accountable under U.S.S.G. § 1B1.3;
- (f) Engages in acts which form a basis for finding that Defendant has obstructed or impeded the

administration of justice under U.S.S.G. § 3C1.1

- (g) Intentionally fails to appear in Court or violate any condition of release;
- (h) Commits a crime; and/or
- (i) Transfers any asset protected under any provision of this Agreement.

Defendant expressly understands that he may not withdraw his plea of guilty, unless the Court rejects this Agreement under Fed. R. Crim. P. 11(c)(5).

4. Agreed Disposition

The U.S. Attorney and Defendant agree pursuant to Fed. Crim. P. 11(c)(1)(C) that the following is the appropriate disposition of this case:

- (a) a term of imprisonment of 46 months;
- (b) a fine that is within the guideline range determined by the court at the time of sentencing unless there is a finding that the defendant lacks sufficient funds to pay a fine ;
- (c) a mandatory special assessment of \$600; and
- (d) a term of supervised release of not more than ten years.

The U.S. Attorney and Defendant agree that there is no basis for a departure from the sentencing range established by the United States Sentencing Guidelines, except as explicitly described in paragraph 3, above. Accordingly, neither the U.S. Attorney nor Defendant will seek a departure on any ground from the Sentencing Guidelines.

5. Payment of Mandatory Special Assessment

Defendant agrees to pay the mandatory special assessment to the Clerk of the Court on or before the date of sentencing, unless Defendant establishes to the satisfaction of the Court that Defendant is financially unable to do so.

6. Waiver of Rights to Appeal and to Bring Collateral Challenge

Defendant is aware that he has the right to challenge his sentence and guilty plea on direct appeal. Defendant is also aware that he may, in some circumstances, be able to argue that his plea should be set aside, or his sentence set aside or reduced, in a collateral challenge such as pursuant to a motion under 28 U.S.C. § 2255.

In consideration of the concessions made by the U.S. Attorney in this Agreement, Defendant knowingly and voluntarily waives his right to appeal or collaterally challenge:

- (1) Defendant's guilty plea and any other aspect of Defendant's conviction, including, but not limited to, any rulings on pretrial suppression motions and any other pretrial dispositions of motions and issues; and
- (2) The imposition by the District Court of the sentence agreed to by the parties, as set out in paragraph 4 and, even if the Court rejects one or more positions advocated by the parties with regard to the application of the U.S. Sentencing Guidelines.

In consideration of the concessions made by the U.S. Attorney in this Agreement, Defendant agrees not to seek to be sentenced or resentenced with the benefit of any successful collateral challenge of any counseled criminal conviction that exists as of the date of this Agreement.

Defendant's waiver of rights to appeal and to bring collateral challenges shall not apply to appeals or challenges based on new legal principles in First Circuit or Supreme Court cases decided after the date of this Agreement which are held by the First Circuit or Supreme Court to have retroactive effect.

This Agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b), and the U.S. Attorney therefore retains his appeal rights.

7. Waiver of Hyde Amendment Claim

Defendant is aware that 111 Stat. 2440, 2520 (1997), the so-called "Hyde Amendment," authorizes courts in criminal cases to award to certain prevailing defendants attorneys' fees and other litigation expenses. In exchange for concessions made by the U.S. Attorney in this Agreement, Defendant voluntarily and knowingly

waives any claim that he might assert under this statute based whole or in part on the U.S. Attorney's agreement in paragraph 1 dismiss counts one and eight through eleven.

8. Probation Department Not Bound By Agreement

The sentencing disposition agreed upon by the parties and their respective calculations under the Sentencing Guidelines are not binding upon the United States Probation Office. Defendant C plea will be tendered pursuant to Fed. R. Crim. P. 11(c)(1)(C). Defendant cannot withdraw his plea of guilty unless the sentencing judge rejects this Agreement. If the sentencing judge rejects the Agreement, this Agreement shall be null and void at the option of either the United States or Defendant. In this regard, Defendant hereby waives any defense to any charges which he might otherwise have under any statute of limitations or the Speedy Trial Act.

9. Information For Presentence Report

Defendant agrees to provide all information requested by the U.S. Probation Office concerning his assets.

10. Civil Liability

By entering into this Agreement, the U.S. Attorney does not compromise any civil liability, including but not limited to a tax liability, which Defendant may have incurred or may incur as a result of his conduct and his plea of guilty to the charges specified in paragraph one of this Agreement.

11. Withdrawal of Plea By Defendant

Should Defendant move to withdraw his guilty plea at any time, this Agreement shall be null and void at the option of the U.S. Attorney.

12. Breach of Agreement

If the U.S. Attorney determines that Defendant has failed to comply with any provision of this Agreement, has violated a condition of his pretrial release, or has committed any crime following his execution of this Agreement, the U.S. Attorney may, at his sole option, be released from his commitments under this Agreement in their entirety by notifying Defendant, through counsel or otherwise, in writing. The U.S. Attorney may also pursue any remedies available to him under the law, irrespective of whether Defendant elects to be released from his commitments under this Agreement. Further, the U.S. Attorney may pursue any and all charges which

have been, or are to be, dismissed pursuant to this Agreement. Defendant recognizes that no such breach by him of an obligation under this Agreement shall give rise to grounds for withdrawal of his guilty plea. Defendant understands that, should he breach a provision of this agreement, the U.S. Attorney will have the right to use against Defendant before any grand jury, at any trial hearing, or for sentencing purposes, any statements which may be made by him, and any information, materials, documents or objects which may be provided by him to the government subsequent to the Agreement, or pursuant to any proffer agreement without a limitation. In this regard, Defendant hereby waives any defense to any charges which he might otherwise have under any statutory limitations or the Speedy Trial Act.

13. Who Is Bound By Agreement

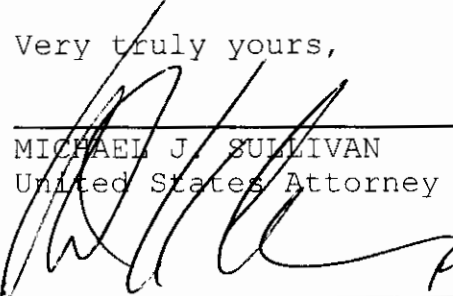
This Agreement is limited to the U.S. Attorney for the District of Massachusetts, and cannot and does not bind the Attorney General of the United States or any other federal, state or local prosecutive authorities.


14. Complete Agreement

This letter contains the complete and only agreement between the parties relating to the disposition of this case. No promises, representations or agreements have been made other than those set forth in this letter and in the proffer letter dated September 9, 2003. This Agreement supersedes prior understandings, if any, between the parties, whether written or oral with the sole exception of those contained in the proffer letter dated September 9, 2003. This Agreement can be modified or supplemented only in a written memorandum signed by the parties or on the record in court.

If this letter accurately reflects the Agreement between the U.S. Attorney and Defendant, please have Defendant sign the Acknowledgment of Agreement below. Please also sign below as Witness. Return the original of this letter to Assistant U.S. Attorney Laura J. Kaplan.

Very truly yours,


MICHAEL J. SULLIVAN
United States Attorney

By  *AKMS*
LAURA J. KAPLAN, Chief
Violent & Organized Crime
Section *9/13/05*

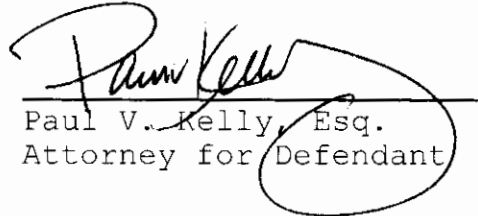
ACKNOWLEDGMENT OF PLEA AGREEMENT

I have read this letter in its entirety and discussed it with my attorney. I hereby acknowledge that it fully sets forth my agreement with the United States Attorney's Office for the District of Massachusetts. I further state that no additional promises or representations have been made to me by any official of the United States in connection with this matter. I understand the crimes to which I have agreed to plead guilty, the maximum penalties for those offenses and Sentencing Guideline penalties potentially applicable to them. I am satisfied with the legal representation provided to me by my attorney. We have had sufficient time to meet and discuss my case. We have discussed the charges against me, possible defenses I might have, the terms of this Plea Agreement and whether I should go to trial. I am entering into this Agreement freely, voluntarily, and knowingly because I am guilty of the offenses to which I am pleading guilty and I believe this Agreement is in my best interest.


Joseph DiPlumera
Defendant

Date: 9/26/05

I certify that Joseph DiFlumera has read this Agreement a that we have discussed its meaning. I believe he understands Agreement and is entering into the Agreement freely, voluntari and knowingly.


Paul V. Kelly, Esq.
Attorney for Defendant

Date: 9-26-05